

October 7, 1996

OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON

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REPORT AND RECOMMENDATION TO THE KING COUNTY COUNCIL

SUBJECT: Department of Development and Environmental Services File No. L96RZ003  
Proposed Ordinance No. 96-668

NORTHWEST PIPELINE/ONE COMMUNICATION CORPORATION  
P-Suffix Amendment

Location: Property located 600 feet south of Redmond-Fall City Road, just  
east of 228th Avenue NE

Applicant: Cydly Smith and/or Cynthia Berne  
D. Garvey Corporation, for  
Northwest Pipeline and One Comm. Corp.  
5808 Lake Washington Blvd., #400  
Kirkland, WA 98033

Represented by David Hall, Attorney At Law  
1920 East Calhoun  
Seattle, WA 98112

SUMMARY OF RECOMMENDATIONS:

Division's Preliminary:	Approve
Division's Final:	Approve
Examiner:	Approve

PRELIMINARY MATTERS:

Application submitted:	July 22, 1996
Notice of appeal received by Examiner:	September 6, 1996
Department Preliminary Report issued:	September 20, 1996

EXAMINER PROCEEDINGS:

Hearing Opened:	9:17 a.m., Thursday, October 3, 1996
Hearing Closed:	10:00 a.m., Thursday, October 3, 1996

Participants at the proceedings and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the Office of the King County Hearing Examiner.

ISSUES ADDRESSED:

- Notice: Amendments to proposal
- Rezone: Changed circumstances  
Public interest

FINDINGS, CONCLUSIONS & RECOMMENDATION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. General Information:  
Applicant: Cydly Smith and/or Cynthia Berne  
D. Garvey Corporation, for  
Northwest Pipeline and One Comm. Corp.  
5808 Lake Washington Blvd., #400  
Kirkland, WA 98033 Phone: 216-3318

Location: Property located 600 feet south of Redmond-Fall City Road, just east of 228th Avenue NE; Parcel No. 222506-9027

Request: P-suffix amendment removing the limitation to pipeline utility use and CUP for construction of a 120-foot monopole tower with antennae extending height to 133 feet; and an 11-foot by 20-foot equipment building and an 8-foot by 10-foot equipment building.

Proposal: P-suffix amendment and Conditional Use Permit

2. Except as modified herein, the facts set forth in the King County Land Use Services Division's Preliminary Report to the Hearing Examiner for the October 3, 1996 public hearing are found to be correct and are incorporated herein by reference. Copies of the LUSD report will be attached hereto for submittal to the Metropolitan King County Council. The LUSD staff recommends approval of the rezone application.
3. On May 1, 1996 One Comm. Corp. filed an application for a Conditional Use Permit for the construction of two small equipment buildings and a 120-foot monopole tower mounted with three omni-directional whip antennas extending to a total height of 133 feet. The antenna system is intended to provide low frequency radio transmissions to serve a cell within the Applicant's cellular telephone network. The approximately three acre site is presently occupied by dispatch and communication facilities for the Northwest Pipeline Corporation, an equipment maintenance shop and a storage yard. The microwave dish used by Northwest Pipeline for radio dispatch service will be co-located onto the monopole. This dish is currently mounted on a lattice tower owned by the Lake Washington School District and sited directly north of the Applicant's property.
4. The Northwest Pipeline property is subject to a P-suffix condition adopted as development condition No. 9 within the 1993 update to the East Sammamish Community Plan. This condition implements Community Plan Policy CI-13 and provides that "any redevelopment of this site shall be limited to pipeline utility and/or school bus base uses." An interpretive opinion issued by DDES's Regulatory Review Committee during the pre-application process concluded that the proposed monopole conflicted with the P-suffix condition and would require its amendment. No appeal of this preliminary determination was made under Section 10.B of Ordinance No. 12196. Accordingly, Northwest Pipeline Corporation applied for a rezone on July 22, 1996 to delete from the P-suffix condition the word "pipeline" as a limiting modifier to permitted utility use of the property.
5. The original proposal submitted by the Applicant's representative envisioned removal of the 75-foot lattice tower on the School District property. On September 30, 1996 the Applicant notified the County that the School District will not be removing the tower structure. Although removal of the tower was referenced in the hearing notices for the rezone and Conditional Use Permit applications, this change in the proposal does not invalidate such notice provisions because removal of the 75-foot tower on the School District parcel is an action auxiliary to the instant proceeding and does not require King County approval. It was therefore not an essential component of the public notice requirement.
6. With the enactment of the Telecommunications Act of 1996 by the US Congress, major changes have occurred within the cellular telephone industry. In the interest of promoting free-market competition, the 1996 Act freed the industry from many of the regulatory limitations under which it had operated. As a consequence, the number of entrants into the cellular telephone service field has been dramatically increasing. In 1993 King County had three cellular telephone service providers. Now there are seven with FCC approval and the likelihood that other competitors will enter the field. This expansion of the cellular market has created a great increase in the demand within King County for monopole sites. Moreover, suitable monopole sites are limited by the locational requirements of the cellular grid and by topographical constraints, a circumstance which is further complicated by the fact that many proposed monopole sites within residential neighborhoods encounter substantial popular resistance. The upshot is that suitable monopole locations in non-residential areas are at a great premium, and market demands can only be met if co-location of facilities is vigorously pursued.

CONCLUSIONS:

1. It is not altogether clear that a rezone is actually required for approval of this monopole application. The P-suffix limitation at issue only applies to "redevelopment" of the Northwest Pipeline site. Since no change or discontinuance of current uses is proposed, an argument can certainly be made that addition of a monopole to the existing constellation of pipeline support uses is not redevelopment of the site but merely a further elaboration of existing development. Be that as it may, the question of rezone necessity is moot in light of the application pending before us.
2. Although the P-suffix condition was imposed in 1993, changed circumstances of a substantial and material nature which were not anticipated by the Community Plan have been triggered by the 1996 Telecommunications Act, which vastly increases the local demand for suitable monopole locations. The unique and specialized requirements for monopole locations result in the Northwest Pipeline property being affected in a manner and degree different from other properties in the vicinity, so that an area rezoning process is neither required nor appropriate.
3. The proposed P-suffix amendment is in the public interest. The purpose of the Community Plan condition is to avoid the creation of new uses in this small rural Industrial zone which would be incompatible with other surrounding rural uses. By broadening the allowable scope of property redevelopment to include utility uses generally, the risk of area incompatibility should not be increased. Moreover, Comprehensive Plan Policies ET-401 through ET-404, which support the expansion of telecommunication systems within the County and encourage their co-location where feasible, provide a compelling public interest upon which the proposed amendment may be based.

#### RECOMMENDATION:

APPROVE reclassification of the subject property by means of amendment of the P-suffix condition applicable to tax lot No. 222506-9027-09 by deleting the word "pipeline" from Sub-Section A, so that the revised P-suffix condition reads as follows:

"A. Any redevelopment of this site shall be limited to utility and/or school bus base uses."

RECOMMENDED this 7th day of October, 1996.

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Stafford L. Smith, Deputy  
King County Hearing Examiner

TRANSMITTED this 7th day of October, 1996, to the following parties and interested persons:

Cynthia Berne, D. Garvey Corp.  
Robert Colland, Lake Washington School District  
Rex Johnson, Northwest Pipeline Corp.  
Cydy Smith, D. Garvey Corp./One Comm. Corp.  
David Hall, Attorney At Law  
Curt Horner, Seattle-King County Health Department  
Aileen McManus, DDES/LUSD, Site Engineering & Planning  
Lisa Pringle, DDES/LUSD, Site Plan Review Section  
Karen Scharer, DDES/LUSD, Site Plan Review Section  
Steve Townsend, DDES/LUSD, Land Use Inspection  
Angelica Velasquez, DDES/LUSD, SEPA Section

#### NOTICE OF RIGHT TO APPEAL AND ADDITIONAL ACTION REQUIRED

In order to appeal the recommendation of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$125.00 (check payable to King County Office of Finance) on or before October 21, 1996. If a notice of appeal is filed, the original and 6 copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council on or before October 28, 1996. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 403, King County Courthouse, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the Clerk of the Council shall place a proposed ordinance which implements the Examiner's recommended action on the agenda of the next available Council meeting. At that meeting, the Council may adopt the Examiner's recommendation, may defer action, may refer the matter to a Council committee, or may remand to the Examiner for further hearing or further consideration.

Action of the Council Final. The action of the Council approving or adopting a recommendation of the Examiner shall be final and conclusive unless a proceeding for review pursuant to the Land Use Petition Act is commenced by filing a land use petition in the Superior Court for King County and serving all necessary parties within twenty-one (21) days of the date on which the Council passes an ordinance acting on this matter.

MINUTES OF THE OCTOBER 3, 1996 PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L96RZ003/L96AC006 - NORTHWEST PIPELINE/ONE COMM CORP:

Stafford L. Smith was the Hearing Examiner in this matter. Participating in the hearing were David Hall/Attorney at Law, and Karen Scharer/DDES-LUSD-Site Plan Review Section.

The following exhibits were offered and entered into the record:

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|----------------|--|
| Exhibit No. 1  | Application for P-Suffix Amendment - L96RZ003, submitted July 22, 1996 (logged in Department of Development and Environmental Services, Land Use Services Division, file No. L96RZ003 as 'F' exhibits)   |
| Exhibit No. 2  | Application for Conditional Use Permit - L96AC006, submitted May 1, 1996 (logged in Department of Development and Environmental Services, Land Use Services Division, file No. L96AC006 as 'D' exhibits) |
| Exhibit No. 3  | SEPA checklist revised and received July 22, 1996  |
| Exhibit No. 4  | Notice of application, notice of SEPA threshold determination, and notice of hearing, mailed August 16, 1996   |
| Exhibit No. 5  | SEPA Threshold Determination, dated August 20, 1996  |
| Exhibit No. 6  | Notice of recommendation, mailed September 17, 1996  |
| Exhibit No. 7  | LUSD Preliminary Report to the Hearing Examiner, prepared for the October 3, 1996 public hearing   |
| Exhibit No. 8  | 4 Assessor Maps, taped together - STR: NW 22-25-06, SW 15-25-06, SE 16-25-06, and NE 21-25-06  |
| Exhibit No. 9  | Development plan - revised August 7, 1996  |
| Exhibit No. 10 | Memorandum from Cynthia Berne/D. Garvey Corp, dated September 30, 1996, revising the project   |
| Exhibit No. 11 | Letter, dated July 1, 1996, from Curt Horner, Seattle-King County Department of Public Health/Environmental Health Division, dated received July 8, 1996   |

SLS:var

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